

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation into the ratemaking implications for Pacific Gas and Electric Company (PG&E) pursuant to the Commission's Alternative Plan of Reorganization under Chapter 11 of the Bankruptcy Code for PG&E, in the United States Bankruptcy Court, Northern District of California, San Francisco Division, In re Pacific Gas and Electric Company, Case No. 01-30923 DM.

Investigation 02-04-026
(Filed April 22, 2002)

SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER

After hearing argument at the prehearing conference of July 9, 2003, **IT IS RULED** that:

1. Scope of proceeding:

This proceeding is limited to determining whether the proposed Settlement Agreement (S.A.) sponsored by Pacific Gas and Electric Company (PG&E), PG&E Corporation, and the Commission staff, and filed with the Commission on June 24, 2003, should be approved by the Commission.

2. Excluded from the Scope:

- a. Alternative plans.
- b. Rate allocation and rate design.
- c. Direct access issues.

3. Included in the Scope:

- a. Whether the proposed S.A. is fair, reasonable, and in the public interest.

- b. Whether the proposed S.A. will be adequate to obtain a favorable bond rating; the best evidence would be a presentation from the rating agencies.
- c. Analysis shall encompass the criteria found in:

San Diego Gas & Electric Company

Decision (D.) 92-12-019 46 CPUC 2d 538;

Dunk v. Ford Motor Co. (1996) 48 CA4 1794, 56 Cal Rptr. 483;

Officers for Justice v. (9th Cir. 1982), 688 F2 615;
Civil Service Commission

Diablo Canyon, D.88-12-083, 30 CPUC 2d 189.

- 4. Modifications to the proposed S.A. may be offered, but they must be limited. Accumulative modifications which result in an essentially alternative plan will be deemed a recommendation that the Commission disapprove the S.A.
- 5. A Rule 51 settlement is encouraged.
- 6. Matters that require clarification by proponents:
 - a. Define “headroom.”

In Re Proposed Policies, etc., (1996) D.96-12-076, 70 CPUC 2d 207, the Commission defined “headroom” in the following manner:

“Freezing rates stabilizes collected revenues (subject to sales variations), and declining costs create “headroom,” *i.e.*, revenues beyond those required to provide service, that can be applied to offset transition costs. The utilities’ reasonable costs of providing service are currently identified as their authorized revenue requirements. (70 CPUC 2d at 219.)

“In general, headroom revenues consist of the difference between recovered revenues at the frozen rate levels (including the reduced rate levels for residential and small commercial customers beginning in 1998) and the reasonable costs of providing utility services, which for convenience we refer to as the authorized revenue requirement.” (70 CPUC 2d at 223.)

If the definition of “headroom” in the proposed S.A. differs from the Commission definition, please explain.

If there is a difference, then PG&E and the Commission staff shall please provide separate estimates of headroom under the Commission definition.

- b. The capital structure and return on the components of the Regulatory Asset.
- c. The choice of a nine-year life for the Regulatory Asset.
- d. The Proposed S.A. ¶ 22 giving the United States Bankruptcy Court jurisdiction over all PG&E rate cases (and, perhaps, all PG&E matters) before the Commission for nine years. This appears to be a consent decree that binds future Commissions for nine years.
- e. The Proposed S.A. ¶ 20 Waiver of Sovereign Immunity, especially the waiver of all “future rights of sovereign immunity.”

7. What is the California Public Utilities Commission’s (CPUC) reasonable exposure in dollars if PG&E’s claims against CPUC were litigated?

8. What is PG&E’s reasonable exposure in dollars if CPUC’s claims against PG&E were litigated?

9. Commission staff shall produce an estimate of the strength of CPUC’s case in PG&E v. Lynch (Case No. C-01-3023-VRW).

10. PG&E shall produce an estimate of the strength of PG&E’s case in PG&E v. Lynch.

11. Schedule:

- a. Proponents’ testimony to be served July 25, 2003.
- b. Intervenor testimony to be served August 29.
- c. All parties’ rebuttal testimony to be served September 8.

- d. A prehearing conference on September 9, at 2 p.m.
- e. Hearings start September 10, at 10 a.m. (reserve September 11,12, 22, and 23).
- f. Briefing schedule will be determined at the hearing.

12. Discovery:

- a. Proponents shall respond to data requests no later than five days after the request. If proponents dispute the request, they should do so within three days of the request.
- b. Should a protective order be needed, the parties are expected to settle the terms between themselves.

13. E-mail service (see Appendix A):

E-mail in a timely fashion, but material that must be filed may be filed a day late by overnight mail. (Testimony is served, not filed.)

Dated July 14, 2003, at San Francisco, California.

/s/ MICHAEL R. PEEVEY

Michael R. Peevey
Assigned Commissioner

APPENDIX A

ELECTRONIC SERVICE PROTOCOLS

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Service of Documents by Electronic Mail

For the purposes of this proceeding, all appearances shall serve documents by electronic mail, and in turn, shall accept service by electronic mail.

Usual Commission practice requires appearances to serve documents not only on all other appearances but also on all non-parties in the state service category of the service list. For the purposes of this proceeding, appearances shall serve the information only category as well since electronic service minimizes the financial burden that broader service might otherwise entail.

Notice of Availability

If a document, including attachments, exceeds 75 pages, parties may serve a Notice of Availability in lieu of all or part of the document, in accordance with Rule 2.3(c) of the Commission's Rules of Practice and Procedure.

Filing of Documents

These electronic service protocols govern service of documents only, and do not change the rules regarding the tendering of documents for filing. Documents for filing must be tendered in paper form, as described in Rule 2, *et seq.*, of the Commission's Rules of Practice and Procedure. Moreover, all filings shall be served in hard copy (as well as e-mail) on the Assigned Commissioner's office and assigned ALJ.

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Electronic Service Standards

As an aid to review of documents served electronically, appearances should follow these procedures:

Merge into a single electronic file the entire document to be served (*e.g.*, title page, table of contents, text, attachments, service list).

Attach the document file to an electronic note.

In the subject line of the note, identify the proceeding number; the party sending the document; and the abbreviated title of the document.

Within the body of the note, identify the word processing program used to create the document. (Commission experience indicates that most recipients can open readily documents sent in Microsoft Word or PDF formats)

If the electronic mail is returned to the sender, or the recipient informs the sender of an inability to open the document, the sender shall immediately arrange for alternative service (paper mail shall be the default, unless another means is mutually agreed upon).

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The current service lists for active proceedings are available on the Commission's web page, www.cpuc.ca.gov. To obtain an up-to-date service list of e-mail addresses:

Choose "Proceedings" then "Service Lists."

- Scroll through the "Index of Service Lists" to the number for this proceeding.
- To view and copy the electronic addresses for a service list, download the comma-delimited file, and copy the column containing the electronic addresses.

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The Commission's Process Office periodically updates service lists to correct errors or to make changes at the request of parties and non-parties on the list. Appearances should copy the current service list from the web page (or obtain paper copy from the Process Office) before serving a document.

Pagination Discrepancies in Documents Served Electronically

Differences among word-processing software can cause pagination differences between documents served electronically and print outs of the original. (If documents are served electronically in PDF format, these differences do not occur.) For the purposes of reference and/or citation in cross-examination and briefing, all parties should use the pagination found in the original document.

(END OF APPENDIX A)

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Scoping Memo and Ruling of Assigned Commissioner on all parties of record in this proceeding or their attorneys of record.

Dated July 14, 2003, at San Francisco, California.

/s/ KE HUANG

Ke Huang

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.